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Paper No. 9

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AUG 8 2003

In re Application of	:	
YAMANAKA.	:	DECISION ON PETITION
Application No. 09/822,417	:	
Filed: April 2, 2001	:	
Attorney Docket No. 3192/2	:	

This is a decision on the petition filed March 11, 2003, requesting that the holding of abandonment in the above-identified application be withdrawn.

The petition to withdraw the holding of abandonment is **DISMISSED**.

A non-final action was mailed on October 26, 2001, setting forth a three-month period of response. Applicant responded with an amendment filed January 25, 2002. The examiner considered the amendment to be non-compliant because it failed to meet requirements of 37 C.F.R. 1.121, mailed a Notice of Non-Compliant Amendment on February 7, 2002 and set forth a one-month period of response. Applicant filed a change of address on March 15, 2002.

Applicant asserts that he did not receive the Notice of Non-Compliant Amendment and that applicant worked at and occupied the premises of the former address until March 15, 2002. Further, applicant asserts that he had arranged to have any documents submitted from the Patent Office to a former address forwarded to the new address.

The review of the application file reveals that the Notice of Non-Compliant Amendment was sent to the correct address. The change of address, which was submitted after the mailing of the Notice of Non-Compliant Amendment, did not require remailing of the Notice of Non-Compliant Amendment.

Pursuant to M.P.E.P. §711.03(c), it is the petitioner's burden to demonstrate that the Notice of Non-Compliant Amendment was not in fact received at the correspondence address of record at the time it was mailed. The showing required to establish the failure to receive an Office action

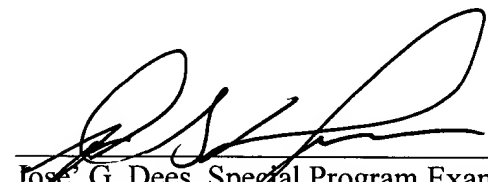
must include a statement from the practitioner stating that the Office action was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been received had it been received and docketed must be attached to and referenced in the practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. §711.03(c),

Applicant has not provided the required statement attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. Further, applicant has not provided a copy of the docket record where the non-received Office action would have been received had it been received and docketed.

Since applicant has not made the requisite showing required under M.P.E.P §711.03(c), the holding of abandonment is proper.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision.

Questions regarding this decision should be directed to Jose' G. Dees at (703) 308-4628.



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